

Updates to Grandfathering Legislation

During 2010, *Healthcare Re-Forum* has helped explain new healthcare rules initiated by the Patient Protection and Affordable Care Act (PPACA) and the Healthcare Education and Reconciliation Act (HCERA). Four issues provided information about grandfathering:

- Grandfathered Plans (No. 1)
- Maintaining Grandfathered Plan Status (No. 12)
- Should My Plan Stay Grandfathered? (No. 13)
- How Do Collective Bargaining Agreements Affect Grandfathered Status? (No. 27)

Legislation about grandfathering was clarified by Interim Final Regulations (IFR) issued by the Departments of Health and Human Services (HHS), Labor and the Treasury (the Departments) on June 14, 2010. The Departments also issued various Frequently Asked Questions (FAQs) on September 20, October 8 and October 29, 2010. Following are some key questions addressed in the FAQs.

FAQs Issued by the Departments

September 20, 2010

What happens if a carrier does not know the group's contribution rate?

Until the issuance of final regulations, if an insurer is unaware of a fully insured group's plan contribution rate change, it will not immediately impact the plan's grandfathered status, as long as the issuer:

1. Discloses in policies, certificates or contracts of insurance, "in a prominent and effective manner," that employers must notify the issuer if the contribution rate changes at any time during the plan year.
2. Requires the employer, upon renewal, to clearly indicate its contribution rate on March 23, 2010, as well as its contribution rate for the plan year covered by the renewal.

This relief will no longer apply as of the first date on which the issuer knows there has been a reduction in contribution rates of more than 5 percent, or the first date on which the plan no longer qualifies for grandfathered

status for any other reason, whichever occurs first. Nothing in PPACA or the IFR prevents a policy, certificate or contract of insurance from requiring an employer to notify an issuer in advance of a contribution rate change.

Please refer to: <http://www.dol.gov/ebsa/faqs/faq-aca.html>

October 8, 2010

Does any change cause a plan to lose grandfather status?

The FAQs issued on October 8 clarified only the following six changes (measured from March 23, 2010) will cause a plan to lose its grandfathered status (any one of these changes alone is sufficient to cause loss of grandfathered status):

1. Eliminating all or substantially all benefits to diagnose or treat a particular condition
2. Raising coinsurance requirements
3. Increasing a deductible or out-of-pocket maximum by an amount that exceeds medical inflation plus 15 percent
4. Increasing copayments by an amount that exceeds medical inflation plus 15 percent (or \$5 plus medical inflation, if greater)
5. Decreasing the employer's contribution rate by more than 5 percent
6. Imposing annual limits on the dollar value of all benefits below specified amounts

Does a change to one plan option cause all plans offered by the group to lose grandfathered status?

Determining grandfathered status applies to each benefit package individually. If a plan offers a PPO, a POS and an HMO, and makes changes to one option causing it to lose its grandfathered status, the remaining unchanged options are still grandfathered plans.

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Will changing coverage tiers cause a loss of grandfathered status?

The IFR standards for employer contributions apply on a tier-by-tier basis. If an employer modifies or eliminates any coverage tiers it had on March 23, 2010, the contribution rate for any new tier would be compared to the contribution rate for the corresponding tier on March 23, 2010. If the contribution rate for the new tiers is within 5 percent of the rate for the prior structure, the plan will retain grandfathered status. However, if a plan adds one or more new tiers without eliminating or modifying any previous tiers and those new tiers cover classes of individuals not previously covered under the plan, the contribution rate for the new tier would not cause the plan to lose grandfathered status. For example, if the plan previously offered only single coverage and added family coverage, it would not lose grandfathered status.

What if a plan only changes the coinsurance for one type of service?

Plans that raise the coinsurance level in one category of services (i.e., specialty care) by an amount exceeding IFR standards while keeping coinsurance levels the same in another (i.e., primary care) will lose grandfathered status.

Please refer to: <http://www.dol.gov/ebsa/faqs/faq-aca2.html>

October 29, 2010

Where should a plan include the grandfathered notice?

Insurers and grandfathered health plans that include a disclosure in each summary plan description indicating the plan is grandfathered will be in compliance with the grandfathering disclosure requirement. It is not necessary to include the disclosure statement with every type of communication to participants and beneficiaries.

Can an individual lower his premium by increasing cost-sharing and still be grandfathered?

If an individual health insurance policy in place on March 23, 2010, gave a policyholder the option to pay a lower premium in exchange for higher cost-sharing amounts, the policyholder could select this choice after March 23 without losing grandfathered status, even if the increase in cost

sharing for the individual exceeds the limits under the grandfathered rule on increases in cost sharing.

What if an employer offers a special supplemental plan that covers services for disabled children and that plan has a lifetime limit?

The PPACA's regulations prohibit lifetime dollar limits on "essential health benefits." However, some employers offer supplemental plans separate from the primary medical plan to provide special treatment and therapy for children with physical, mental or developmental disabilities. These plans often impose lifetime dollar limits on the supplemental benefits. According to the Departments' FAQ, until "essential health benefits" are defined by final regulations, plans may impose per-child lifetime dollar limits on benefits provided under such supplemental plans. The Departments will treat such limits as a "reasonable good faith interpretation" of the law and will not take enforcement action.

Please refer to: <http://www.dol.gov/ebsa/faqs/faq-aca4.html>

Guidance on Grandfathered Status of Groups Changing Carriers

Has the government updated its position on groups changing carriers?

On November 15, 2010, HHS amended its position on grandfathered group plans and their ability to change insurers. Per HHS, employers are able to change insurance companies or third-party administrators and still maintain grandfathered status. Groups that choose to switch insurers must still follow other regulations defining what changes a group may make while maintaining grandfathered status.

Please refer to:

<http://www.hhs.gov/ociio/regulations/grandfather/factsheet.html>

This will be the last issue of *Healthcare Re-Forum* for 2010. The *Re-Forum* schedule for 2011 will be dictated in large part by the amount of reform information communicated from the responsible departments in Washington. We will use *Re-Forum* as one of our tools to keep you informed and current on healthcare reform.

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